

Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES  
AND TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(*Phonorecords IV*)

)  
)  
) Docket No. 21-CRB-0001-PR  
) (2023-2027)  
)  
)

AMAZON'S MOTION TO STRIKE, OR IN THE ALTERNATIVE  
TO SUBMIT SUPPLEMENTAL TESTIMONY, CONCERNING  
THE [REDACTED]

The Judges should strike the portions of the Copyright Owners' Written Rebuttal  
Statement that rely on Amazon's [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Amazon's Written Direct Statement and Written Rebuttal

Statement complied with that contract bar. The Copyright Owners have breached it.

Neither of the Copyright Owners' inconsistent excuses for that breach has merit. *First*,  
they claim Amazon "put into evidence" information about [REDACTED] because a few  
exhibits to Amazon's Written Direct Statement mentioned those licenses in passing while

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<sup>1</sup> This comprises the last sentence of paragraph 16 and all of paragraphs 21-22 and footnote 5 of the Kokakis WRT, and the portions of paragraphs 113-119 of the Eisenach WRT identified with red strikethrough in Appendix A to this motion.

addressing other topics.<sup>2</sup> But none of Amazon's witnesses testified about those stray references or otherwise used the [REDACTED] in any way. Amazon also has since redacted from its exhibits [REDACTED] the Copyright Owners cite. And Amazon long ago informed the Copyright Owners that, when it offers exhibits at the hearing, it will not designate as evidence any of the stray portions discussing [REDACTED]. Amazon thus has done nothing to open the door to the Copyright Owners' improper use of those licenses here.

*Second*, the Copyright Owners inconsistently claim that the prohibitory language [REDACTED] never “prohibit[ed] a discussion” of Amazon’s [REDACTED] – in other words, that the door was always open.<sup>3</sup> But the text of the [REDACTED] provision forecloses that position, because it bars [REDACTED]

[REDACTED]<sup>4</sup> The Copyright Owners have done just what that clause prohibits. And by using [REDACTED] while withholding all other evidence about them, the Copyright Owners have created the worst of all worlds: a misleading and one-sided record that violates the contract terms while also depriving the Judges of a sufficient evidentiary basis to evaluate these licenses as benchmarks.

The Judges should enforce the terms of the [REDACTED] and strike this testimony.

Courts routinely enforce such clauses in litigation by striking testimony that violates

<sup>2</sup> Kokakis WRT ¶ 8 n.5; *see* Eisenach WRT ¶ 113 n.178 (similar).

<sup>3</sup> Kokakis WRT ¶ 21.

<sup>4</sup> See Suppl. Written Direct Testimony of James Duffett-Smith (“Duffett-Smith SWDT”) ¶¶ 29 & n.85, 31 & n.93; Ex. 321 [REDACTED]; Ex. 322 [REDACTED]; Ex. 319 [REDACTED]. [REDACTED] “Ex.” refers to Amazon’s Exhibits in this proceeding, including new Exs. 319-349 attached to the Duffett-Smith SWDT (attached as Mot. Ex. C). “Mot. Ex.” refers to the three exhibits attached to this motion.

them. And the Copyright Owners are now trying to use the [REDACTED] to their advantage by submitting testimony about the part of the license they think helps them ([REDACTED] [REDACTED]) while withholding the parts that do not ([REDACTED]). Striking the Copyright Owners' testimony is the best way to remedy the harm from their breach.

In the alternative, the Judges should allow Amazon to file the attached Supplemental Written Direct Testimony from James Duffett-Smith to ensure a complete record about [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], as Mr. Duffett-Smith explains in detail. In fact, Amazon's [REDACTED] shows why Amazon's per-play rate proposal Prime Music makes sense. Mr. Duffett-Smith would have included this discussion in his Written Direct Testimony but for the contract bar the Copyright Owners now have breached. The Judges should not allow the Copyright Owners to create an incomplete and one-sided record about these licenses.

## BACKGROUND

### A. Amazon's [REDACTED]

In 2016, [REDACTED]

Duffett-Smith SWDT ¶ 7. [REDACTED]

[REDACTED]

[REDACTED] Mr. Duffett-Smith considers such "[REDACTED]" language to be boilerplate, *id.* ¶¶ 29, 38, and no party has claimed that such language bars the use of licenses in

these proceedings. In *Phonorecords III*, the Copyright Owners [REDACTED]

[REDACTED]<sup>5</sup>

[REDACTED] Duffett-Smith SWDT ¶ 8. By September 2018, [REDACTED] *Id.* ¶ 11. But when the Judges issued the *Phonorecords III* Final Determination, which retroactively altered the definition of Service Provider Revenue for bundles, [REDACTED] *Id.* ¶ 17. *Phonorecords III* created damaging uncertainty for Prime Music, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>5</sup> Written Statement of David Kokakis ¶ 80, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Oct. 28, 2016).

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<sup>6</sup> Ex. 342.1, [REDACTED]

Ex. 342.2,

<sup>7</sup> Ex. 345, [REDACTED]

<sup>8</sup> *Id.* at 1 [REDACTED]

<sup>9</sup> *Id.* (emphasis added).

## B. Amazon's Efforts To Comply With the [REDACTED]

Early in *Phonorecords IV*, Amazon conferred with the Copyright Owners to explain its intent to abide by the contract bar that [REDACTED]<sup>10</sup> Amazon also asked whether the Copyright Owners were “planning to produce, cite as a benchmark, use as part of an expert analysis, introduce as evidence, or otherwise use [REDACTED] in any way in Phono 4,” noting that “doing so would be a breach of contract.”<sup>11</sup> Other email exchanges ensued – in which Amazon reiterated that it was “not planning to use [REDACTED] in any way in our case, because we would view that as a breach of contract” – and the Copyright Owners stated that they, too, did “not intend [to] use the agreements in [their] direct case.”<sup>12</sup>

Consistent with its representations to the Copyright Owners, and relying on their position, Amazon did not discuss the [REDACTED] in its Written Direct Statement. None of Amazon's witnesses described those licenses or relied on them as evidence. Nor did Amazon include as exhibits [REDACTED], any communications [REDACTED] about them, or its [REDACTED] [REDACTED] analyzing them. In fact, the witness who testified about Amazon's [REDACTED] explained he was omitting discussion of [REDACTED]

[REDACTED]<sup>13</sup>

Even still, the Copyright Owners sought discovery about [REDACTED] They claimed their discovery requests were warranted because a few exhibits to Amazon's Written

<sup>10</sup> Mot. Ex. A, August 16, 2021 Email chain from J. Branson to M. Harris at 8-9 (July 23, 2021 Email from J. Branson to B. Semel).

<sup>11</sup> *Id.* at 6 (July 28, 2021 Email from J. Branson to B. Semel).

<sup>12</sup> *Id.* at 1 (Aug. 16, 2021 Emails between J. Branson and M. Harris). While the Copyright Owners “reserve[d] all rights to use [the agreements] on rebuttal,” Amazon's counsel noted that, because “Amazon will not use them in [its] direct case, we cannot foresee any scenario in which the Copyright Owners' use of the agreements on rebuttal would be . . . consistent with the contract terms.” *Id.* The Copyright Owners did not respond further.

<sup>13</sup> Written Direct Testimony of James Duffett-Smith ¶ 94 n.66.

Direct Statement addressing other topics – such as [REDACTED] – contained passing references to [REDACTED]<sup>14</sup> Although Amazon disagreed with the Copyright Owners’ position, it corrected its Written Direct Statement to redact from its exhibits those stray references to [REDACTED] Amazon made these redactions solely to clarify that it was not using [REDACTED] in this proceeding.<sup>15</sup>

On March 30, 2022, the Copyright Owners filed a motion objecting, among other things, to Amazon’s replacement of those exhibits with versions that redacted the references to [REDACTED]<sup>16</sup> That motion was still pending when the Copyright Owners filed their Written Rebuttal Statement. Yet the Copyright Owners engaged in self-help and gave Dr. Eisenach the original, unredacted versions of Amazon’s exhibits anyway.

### C. The Copyright Owners Offer Rebuttal Testimony About [REDACTED]

Two of the Copyright Owners’ witnesses offer rebuttal testimony about the [REDACTED] [REDACTED] Mr. Kokakis, UMPG’s Chief Counsel who [REDACTED] [REDACTED] Kokakis WRT ¶¶ 8 n.5, 16, 21-22.

He acknowledges that [REDACTED] [REDACTED] [REDACTED] *Id.* ¶ 8 n.5. But he also asserts that

Amazon’s exhibits – before Amazon redacted them – [REDACTED] [REDACTED] *Id.* ¶ 21. Based on that assertion, he testifies about the [REDACTED]

<sup>14</sup> Mot. Ex. B, Ltr. from K. Kim to K. Arora (Jan. 13, 2022) at 6.

<sup>15</sup> Notice of Errata in Amazon’s Written Direct Statement (Dec. 10, 2021) (“Notice of Errata”), at 1.

<sup>16</sup> Mem. of Copyright Owners in Supp. Of Mot. to Compel Amazon to Produce Unredacted Documents and Challenge to Amazon’s Clawback Notice (Mar. 30, 2022) (“CO Mot. to Compel Unredacted Documents”).

[REDACTED] *Id.* ¶ 22. He also testifies that [REDACTED]  
 [REDACTED] *Id.* ¶ 16.

Dr. Eisenach, for his part, repeatedly cites [REDACTED]  
 [REDACTED], which appeared in passing in Amazon’s unredacted exhibits. Eisenach  
 WRT ¶ 113 & Tbl. 5 & n.178; *id.* ¶ 118 & Tbl. 8; *id.* ¶ 119 & n.185. He also relies on Mr.  
 Kokakis’s [REDACTED]  
 [REDACTED] *Id.* ¶¶ 113-19. He then invokes both calculations as a reason to reject Amazon’s  
 rate proposal and to disregard [REDACTED]. *Id.* And  
 despite having no other information about [REDACTED]  
 [REDACTED] *Id.* ¶ 114.

## ARGUMENT

### I. THE COPYRIGHT OWNERS’ WRITTEN REBUTTAL STATEMENT VIOLATES THE TERMS OF THE [REDACTED]

The Copyright Owners have violated the prohibitory language [REDACTED]  
 [REDACTED] That language is broad. It binds the parties, their experts,  
 and their representatives, specifically including [REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* ¶¶ 29-32, 37-38.

The Copyright Owners have done what the [REDACTED] prohibit on their face. Most obviously, Mr. Kokakis [REDACTED]

[REDACTED] Kokakis WRT ¶ 22. Mr. Kokakis also uses [REDACTED] to oppose the all-in minima Amazon advocates. *Id.* ¶ 16.

Dr. Eisenach, in turn, [REDACTED]

[REDACTED]

[REDACTED] Eisenach WRT ¶¶ 113-118. And Dr. Eisenach invokes [REDACTED]

[REDACTED]

[REDACTED] *Id.* ¶ 114. Each of these uses violated a specific bar in the agreements – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Copyright Owners offer two justifications for breaching the prohibitory clause in all three agreements. Neither has merit. In fact, the two rationales contradict each other.

*First*, Mr. Kokakis asserts that [REDACTED]

[REDACTED] and thus opened

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<sup>17</sup> Ex. 9, AMZN\_Phono IV\_00002484 [REDACTED]  
[REDACTED] *see also* Ex. 24, AMZN\_Phono IV\_00004918 [REDACTED]; Ex. 23,  
AMZN\_Phono IV\_00007346 [REDACTED]  
[REDACTED]

the door for the Copyright Owners to do the same. Kokakis WRT ¶ 21. But nothing is “put into evidence” until the hearing. And no Amazon witness testified about any portion of any exhibit mentioning [REDACTED]. That distinction is controlling. The Judges’ rules recognize that exhibits may contain ancillary information that the sponsoring participant does “not intend[] as evidence.” 37 C.F.R. § 351.10(c)(2). At the hearing, participants must “designate[] . . . the matter offered in evidence” in such exhibits, to differentiate them from the “parts . . . [that] are not intended as evidence.” *Id.* Amazon’s identification of exhibits in its Written Direct Statement thus did not put these documents into evidence at all, much less introduce the stray references to [REDACTED] that no witness mentioned.

Moreover, in response to the Copyright Owners’ mistaken claim that Amazon had opened the door, Amazon corrected its Written Direct Statement to redact from its exhibits all stray references to [REDACTED].<sup>18</sup> Amazon did so solely to clarify that it would not be introducing these portions of the documents as evidence or otherwise relying on them.<sup>19</sup> But the Copyright Owners objected to that as well.<sup>20</sup> Their motion challenging Amazon’s redactions was still pending when the Copyright Owners’ filed their Written Rebuttal Statement.

That sequence of events puts the lie to Mr. Kokakis’s claim that Amazon is [REDACTED]. [REDACTED] Kokakis WRT ¶ 21. The Copyright Owners made this same assertion to Amazon in discovery, and Amazon responded by redacting [REDACTED]. [REDACTED] they claimed Amazon was using as a sword. But the Copyright Owners then objected

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<sup>18</sup> Notice of Errata at 1.

<sup>19</sup> *See id.*

<sup>20</sup> *See* CO Mot. to Compel Unredacted Documents at 19.

to Amazon’s redactions as attempts to “suppress information.”<sup>21</sup> This was all a ploy. There was never any confusion about whether Amazon had relied on [REDACTED], and if there were, Amazon quickly remedied it by redacting the offending references. The Copyright Owners’ objection to that remedy reveals their true interest here: using Amazon’s original exhibits – which did *not* breach the prohibitory clause – to invent a rationale for their own belated use of [REDACTED]. And by sequencing it the way they did, the Copyright Owners now seek to present the Judges with only superficial, one-sided information about those licenses.

Mr. Kokakis’s attempt to rely on [REDACTED] reinforces the point. Although he avoids citing it directly, Mr. Kokakis invokes that [REDACTED]

[REDACTED]  
[REDACTED] Kokakis WRT ¶ 16. That is a veiled reference to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], then, the Copyright Owners lack even the fig leaf they use to justify their [REDACTED]. Mr. Kokakis’s use of [REDACTED] confirms the broader point: the Copyright Owners’ breach of contract was never about what “Amazon’s own exhibits put into evidence.” Kokakis WRT ¶ 21.

*Second*, after arguing that Amazon opened the door, the Copyright Owners also argue that the door was open all along. They claim the [REDACTED]

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<sup>21</sup> Copyright Owners’ Mem. in Opp’n to Amazon’s Mot. to Compel Production of Documents Concerning the [REDACTED] at 2-3 n.2 (Mar. 2, 2022); Copyright Owners’ Opp’n to Conditional Mot. to Compel Fin. Documents at 9 n.12 (Mar. 2, 2022).

██████████<sup>22</sup> That argument misreads the contract language ██████████  
 That provision does not merely ██████████  
 ██████████  
 ██████████  
 ██████████ the Copyright Owners invoke – both ██████████ – use the ██████████  
 ██████████ And Dr. Eisenach’s reliance on unredacted versions of  
 Amazon’s ██████████ not only reflects a prohibited ██████████ but also  
 uses Amazon internal ██████████ *Id.* The contract terms  
 prohibit both uses. The assertion that the contracts ██████████  
 ██████████ Kokakis WRT ¶ 21, cannot be squared with the text of those provisions.

Basic contract law confirms the point. Under a venerable “common-law rule of contract interpretation,” courts typically “construe ambiguous language against the interest of the party that drafted it.” *Mastrobuono v. Shearson Lehman Hutton Inc.*, 514 U.S. 52, 62-63 (1995); *see Cole v. Burns Int’l Sec. Servs.*, 105 F.3d 1465, 1486 (D.C. Cir. 1997) (“It is also accepted that ambiguous provisions are construed against the drafter of the contract”). ██████████  
 ██████████ Duffett-Smith SWDT ¶¶ 29-31, 37.

Accordingly, if there were any ambiguity (there is not), the Judges should resolve it in Amazon’s favor and find that the Copyright Owners’ rebuttal submission breaches the agreements.

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<sup>22</sup> Reply Mem. of Copyright Owners in Further Supp. of CO Mot. to Compel Unredacted Documents at 7 (Apr. 13, 2022); *see also* Kokakis WRT ¶ 21.

## II. THE JUDGES SHOULD ENFORCE THE CLAUSE THAT [REDACTED] AND STRIKE THE TESTIMONY THAT VIOLATES IT

Because the Copyright Owners have breached the contracts, the Judges should strike the testimony that created the breach. [REDACTED]

[REDACTED] Duffett-Smith SWDT ¶ 30.<sup>23</sup> Amazon has complied with that provision. The record thus currently lacks evidence about the genesis of [REDACTED] or the reasons [REDACTED] [REDACTED] the Copyright Owners cite. The reason for the one-sided record is simple: Amazon complied with the prohibition in the contracts; the Copyright Owners did not.

The Judges should enforce that prohibition now. Indeed, where parties contract to exclude evidence from a civil proceeding, courts hold them to their agreement. *See Radio Music License Committee, Inc. (“RMLC”) v. Global Music Rts., LLC (“GMR”),* 2019 WL 1437981 (E.D. Pa. Mar. 29, 2019).<sup>24</sup> *RMLC* was a civil action claiming that GMR – then a newly formed PRO – exercised unlawful monopoly power. *Id.* at \*1. The parties had executed an interim license, *id.* at \*5-6, which included a provision obligating the parties “not to use the negotiation of or existence of any interim license . . . in any way” in “[l]awsuits,” *id.* at \*6. Despite that contract bar, RMLC later based complaint allegations on the interim license. The court struck those allegations because they violated the contract’s prohibitory clause. *Id.* at \*14-16. When GMR moved to strike, the court found “the ‘use’ limitation in the Interim License Agreement is dispositive on this issue.” *Id.* at \*15. Thus, “although striking allegations from pleadings are

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<sup>23</sup> Ex. 345, [REDACTED]

<sup>24</sup> *See also, e.g., Used-Car-Parts.com, Inc. v. Nusbaum,* 2005 WL 2035512, at \*6-7 (E.D. Ky. Aug. 22, 2005) (enforcing contract clause that barred contracting parties from using contract or negotiations “to prove or refute any position of any party in any proceeding”).

disfavored, the Court [did] so here in the interest of justice.” *Id.* at \*16. The case for striking the Copyright Owners’ testimony is even stronger. Unlike in *RMLC*, the contract bar here [REDACTED]

[REDACTED]

*RMLC* matches courts’ broader practice of enforcing agreements to exclude evidence or limit the scope of litigation. For example, courts enforce parties’ stipulations that they will not introduce evidence in a civil proceeding. *See, e.g., Conceptus, Inc. v. Hologic, Inc.*, 2011 WL 13152795, at \*4 (N.D. Cal. Sept. 27, 2011) (noting that ruling on motion in limine did “not release” party of “its stipulated agreement not to reference [certain] patents”). Parties can agree by contract to waive arguments or defenses. *See, e.g., Studiengesellschaft Kohle, mbH v. Hercules, Inc.*, 748 F. Supp. 247, 251 (D. Del. 1990) (enforcing written agreement by defendants to waive statute of limitations defense, where “[t]he wording of this agreement appears to have been carefully considered”). Parties can even agree by contract to forgo basic legal rights like the right to a jury trial, *see Lehman Bros. Holdings Inc. v. Bethany Holdings Grp., LLC*, 801 F. Supp. 2d 224, 230-31 (S.D.N.Y. 2011) (enforcing jury waiver provision), or the right to pursue adjudication in their chosen forum, *see Cheney v. IPD Analytics, LLC*, 583 F. Supp. 2d 108, 120 (D.D.C. 2008) (enforcing forum selection clause). Here, the relief Amazon seeks is much less onerous. [REDACTED]

[REDACTED] Amazon simply asks the Judges to hold the Copyright Owners to that language.

Striking the Kokakis and Eisenach rebuttal testimony is a proper remedy for the Copyright Owners’ breach. Specific performance is the normal contract remedy where, as here, monetary damages cannot rectify the breach. *See* Restatement (Second) of Contracts § 357 (1981). For example, courts often order specific performance to remedy breach of a settlement agreement, by dismissing lawsuits that violate the agreement. *See, e.g., Shoshone-Bannock*

*Tribes of Fort Hall Reservation v. Bernhard*, 486 F. Supp. 3d 61, 68 (D.D.C. 2020) (“An action to enforce a settlement agreement is, at bottom, an action seeking the equitable remedy of specific performance of a contract.”). The same remedy applies, as in *RMLC*, when a party breaches an agreement not to introduce particular evidence. *See* 2019 WL 1437981, at \*16.

Those principles support striking the Copyright Owners’ testimony. [REDACTED]

[REDACTED] created a situation similar to cases involving settlement agreements, *see Samra v. Shaheen Bus. & Inv. Grp., Inc.*, 355 F. Supp. 2d 483, 493-94 (D.D.C. 2005), or evidentiary stipulations, *see United States v. Kanu*, 695 F.3d 74, 78 (D.C. Cir. 2012) (“Stipulations, like admissions in the pleadings, are generally binding on the parties and the court.”). The Judges should thus exclude the evidence that flows from the Copyright Owners’ breach. Indeed, the Judges have authority to enforce the contract bar against the Copyright Owners, just as they would have authority to enforce an evidentiary stipulation. And as in similar cases, specific performance is the proper remedy. The Judges should issue an order “to produce as nearly as is practicable the same effect that the performance due under a contract would have produced.” Restatement (Second) of Contracts § 357 cmt. a. Here, that means striking the testimony the Copyright Owners submitted in violation of the contracts.

### **III. IN THE ALTERNATIVE, THE JUDGES SHOULD ALLOW AMAZON TO SUPPLEMENT ITS WRITTEN DIRECT STATEMENT**

If the Judges do not strike the Copyright Owners’ rebuttal testimony, they should permit Amazon to submit Mr. Duffett-Smith’s attached Supplemental Written Direct Testimony. The Judges have allowed similar testimony when necessary to “ensure a comprehensive record” about purported benchmark licenses. Order Denying Licensee Services’ Motion to Strike SoundExchange’s Corrected Written Rebuttal Testimony at 11, Dkt. No. 14-CRB-0001-WR

(2016-2020) (*Web IV*) (Apr. 2, 2015) (“*Web IV* Order”) (authorizing sur-rebuttal to ensure “a comprehensive record” with “a full written explanation by licensors *and* licensees of th[e] agreements”); *see also* Order Granting in Part and Denying in Part Services’ Motion to Strike Copyright Owners’ Expert Testimony at 12, Dkt. No. 16-CRB-0003-PR (2018-2022) (Remand) (*Phonorecords III*) (Oct. 1, 2021) (granting leave to file supplemental testimony); Order Granting in Part and Denying in Part Music Choice’s Motion to Compel SoundExchange at 4, Dkt. No. 16-CRB-0001 SR/PSSR (2018-2022) (*SDARS III*) (Jan. 23, 2017) (allowing surreply).

The same is true here if the Judges do not strike the Copyright Owners’ rebuttal testimony. Without the attached Supplemental Written Direct Testimony – which explains [REDACTED] [REDACTED] – the Judges will have a one-sided record. A “full written explanation by licensors *and* licensees,” *Web IV* Order at 11, must include Mr. Duffett-Smith’s testimony showing how [REDACTED] [REDACTED], Duffett-Smith SWDT ¶¶ 17-28, 33-36. Mr. Duffett-Smith would have submitted this testimony earlier but for the prohibitory clause the Copyright Owners now have breached. *Id.* ¶ 2. In fact, [REDACTED]

*See* Duffett-Smith WDT ¶¶ 197-210.

As Mr. Duffett-Smith now shows (SWDT at ¶¶ 3, 18-28), Dr. Eisenach is wrong to frame

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Eisenach WRT ¶ 114. The Judges should not reward the Copyright Owners for their breach of contract by allowing Dr. Eisenach's inaccurate claim to go un rebutted.

## CONCLUSION

The Judges should grant the Motion.



May 5, 2022

Respectfully submitted,

/s/ Joshua D. Branson

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# Appendix A

*Restricted – Subject to Protective Order in  
Docket No. 21-CRB-0001-PR (2023-2027)  
(Phonorecords IV)*

Omitted from Public Version

# Exhibits A-B

*Restricted – Subject to Protective Order in  
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Docket No. 21-CRB-0001-PR  
(2023-2027)

**SUPPLEMENTAL WRITTEN DIRECT TESTIMONY OF JAMES DUFFETT-SMITH**

1. My name is James Duffett-Smith. On October 13, 2021, I submitted written direct testimony on behalf of Amazon Music. On April 22, 2022, I submitted rebuttal testimony.

As I explained in my direct submission, I omitted discussion of [REDACTED]

[REDACTED] barring the parties from [REDACTED] in this proceeding.<sup>1</sup> I

understand the Copyright Owners now say [REDACTED]

[REDACTED]<sup>2</sup> I further understand that the Copyright Owners present several calculations based on [REDACTED],<sup>3</sup> and their expert portrays

[REDACTED]<sup>4</sup>

2. I submit this supplement to ensure a complete record about Amazon's [REDACTED]  
[REDACTED] I would have discussed [REDACTED] earlier but for the contractual bar on doing so. As shown below, [REDACTED]

<sup>1</sup> Written Direct Testimony of James Duffett-Smith ("Duffett-Smith WDT") ¶ 94 n.66.

<sup>2</sup> See, e.g., Written Rebuttal Testimony of David Kokakis ("Kokakis WRT") ¶¶ 21.

<sup>3</sup> Kokakis WRT ¶¶ 21-22; Written Rebuttal Testimony of Jeffrey A. Eisenach ("Eisenach WRT") ¶¶ 113-19.

<sup>4</sup> Eisenach WRT ¶ 114.

[REDACTED]

[REDACTED] I believe that contractual terms should be adhered to by parties that enter into them. Had I known that [REDACTED]

[REDACTED] I would have included this discussion in my Written Direct Testimony. The facts below are based on my personal knowledge or on information made available to me in the course of performing my duties at Amazon Music.

3. This testimony explains that our [REDACTED]

[REDACTED] Shortly before the *Phonorecords III* Final Determination,<sup>5</sup> we had

## I. BACKGROUND

4. [REDACTED]

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<sup>5</sup> Final Determination, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Nov. 5, 2018) (“*Phonorecords III* Final Determination”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>7</sup>

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>6</sup> Duffett-Smith WDT ¶ 36.

<sup>7</sup> *Id.* ¶¶ 27-46 [REDACTED]

<sup>8</sup> Ex. 319, [REDACTED]

<sup>9</sup> Ex. 320, [REDACTED]

<sup>10</sup> Ex. 321, [REDACTED]

<sup>11</sup> Ex. 322, [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			

6. In this supplemental written direct testimony, I focus on Amazon's experience

[REDACTED]

[REDACTED]<sup>13</sup>

## II. AMAZON'S [REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>12</sup> Ex. 319, [REDACTED]

<sup>13</sup> Kokakis WRT ¶ 16.

<sup>14</sup> Ex. 320, [REDACTED]

<sup>15</sup> *Id.* [REDACTED]

<sup>16</sup> *Id.* [REDACTED]

<sup>17</sup> Ex. 323, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>18</sup>

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>19</sup>

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. [REDACTED]

11. [REDACTED]

[REDACTED]

---

<sup>18</sup> *Id.* at 2.

<sup>19</sup> Ex. 321, [REDACTED]

<sup>20</sup> *Id.* [REDACTED]

<sup>21</sup> Ex. 322, [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]

<sup>22</sup> Ex. 324, [REDACTED]

<sup>23</sup> *Id.* at 1-2 [REDACTED]

<sup>24</sup> *Id.* at 1 [REDACTED]

<sup>25</sup> Ex. 325, [REDACTED]

<sup>26</sup> Ex. 326, [REDACTED]

<sup>27</sup> *Id.* at 1-2 [REDACTED]

<sup>28</sup> Ex. 327, [REDACTED]

<sup>29</sup> Ex. 328, [REDACTED]

<sup>30</sup> Ex. 329, [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>31</sup> *Id.* at 1 [REDACTED]

<sup>32</sup> *Id.* at 1-2.

<sup>33</sup> Ex. 330, [REDACTED]

<sup>34</sup> Ex. 331, [REDACTED]

<sup>35</sup> Ex. 324, [REDACTED]

*id.* at 1 [REDACTED]

<sup>36</sup> *Id.* at 4-5 [REDACTED]

<sup>37</sup> *Id.* at 1-2 [REDACTED] *see also* Initial Determination, Dkt. No. 16-CRB-0003-PR (2018-22) (*Phonorecords III*) (Jan. 26, 2018) (“*Phonorecords III* Initial Determination”).

<sup>38</sup> Ex. 326, [REDACTED]

*id.* at 4-5 [REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>39</sup> Ex. 332, [REDACTED] Ex. 333,

[REDACTED]

<sup>40</sup> Ex. 327, [REDACTED]

[REDACTED]

<sup>41</sup> *Id.* at 1 [REDACTED]

<sup>42</sup> Ex. 326, [REDACTED]

[REDACTED]

<sup>43</sup> Ex. 324, [REDACTED]

[REDACTED]

<sup>44</sup> Ex. 326, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

---

<sup>45</sup> Ex. 325, [REDACTED] *see* Ex. 334, [REDACTED]

<sup>46</sup> Ex. 327, [REDACTED]

<sup>47</sup> *Id.*

<sup>48</sup> *See* Duffett-Smith WDT at Part II.A.

<sup>49</sup> Ex. 335, [REDACTED]

<sup>50</sup> Ex. 329, [REDACTED]

B. [REDACTED]

17. On November 5, 2018, the Judges issued the *Phonorecords III* Final Determination, which retroactively changed the bundled-service revenue rules then applicable to Prime Music. [REDACTED]

[REDACTED] Indeed, Prime Music is a *limited catalog* service with only about 2 million tracks, and Amazon uses it primarily to funnel users to its full-catalog Unlimited service.<sup>56</sup> [REDACTED]

<sup>51</sup> Ex. 331, [REDACTED]

<sup>52</sup> *Id.* at 1 [REDACTED]

<sup>53</sup> Ex. 336, [REDACTED]; *see also* Ex. 337, [REDACTED]

<sup>54</sup> Ex. 338, [REDACTED]

<sup>55</sup> *Id.* at 1-2 [REDACTED]; Ex. 339, [REDACTED]

<sup>56</sup> Duffett-Smith WDT ¶¶ 192-94.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED]

[REDACTED]

[REDACTED]

---

<sup>57</sup> *Id.* ¶¶ 200-02.

<sup>58</sup> Ex. 338, [REDACTED]

<sup>59</sup> *Id.* at 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

---

<sup>60</sup> Ex. 340, [REDACTED] This document was previously designated as Exhibit 94 to Amazon’s Written Direct Statement, and Amazon replaced the original version of this exhibit with one that redacted the discussion of the [REDACTED] on page 1. I have attached, and refer to, the unredacted version of this document on the understanding that the redactions are not needed if the parties are permitted to submit testimony in this proceeding concerning [REDACTED]

<sup>61</sup> See Duffett-Smith WDT at ¶¶ 195-210.

<sup>62</sup> Ex. 341, [REDACTED]

<sup>63</sup> Ex. 336, [REDACTED]

<sup>64</sup> *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>65</sup> Ex. 340, [REDACTED]

<sup>66</sup> Ex. 334, [REDACTED]

[REDACTED]

<sup>67</sup> Ex. 336, [REDACTED]

<sup>68</sup> Ex. 342, [REDACTED]

[REDACTED]

<sup>69</sup> *Id.* at 2-3 [REDACTED]

<sup>70</sup> *Id.* at 1 [REDACTED]



[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>71</sup> *Id.* at 3-4 [REDACTED]

<sup>72</sup> *Id.* at 2-3 [REDACTED]

<sup>73</sup> *Id.* at 2 [REDACTED]

<sup>74</sup> *Id.* at 2 [REDACTED]

<sup>75</sup> *Id.* at 1 [REDACTED]

<sup>76</sup> Compare Ex. 321, [REDACTED] with Duffett-Smith WDT ¶ 193.

<sup>77</sup> Compare Ex. 321, [REDACTED] with Duffett-Smith WDT ¶¶ 219-22.

<sup>78</sup> Ex. 337, [REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>79</sup> See Eisenach WRT ¶ 113 & Fig. 5.

<sup>80</sup> Duffett-Smith WDT ¶¶ 108-17.

<sup>81</sup> *Id.* ¶¶ 201-07.

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>82</sup> Ex. 92, AMZN Phono IV 00015404 [REDACTED]

[REDACTED]

<sup>83</sup> See, e.g., Ex. 343, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

---

84 [REDACTED]

[REDACTED] See Ex. 344, [REDACTED]

[REDACTED] This document was previously designated as Exhibit 96 to Amazon's Written Direct Statement, and Amazon replaced the original version of this exhibit with one that redacted the discussion of the [REDACTED]. I have attached, and refer to, the unredacted version of this document on the understanding that the redactions are not needed if the parties are permitted to submit testimony in this proceeding concerning [REDACTED]

85 See Ex. 342, [REDACTED]

Ex. 342.1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>86</sup> Ex. 320, [REDACTED]

<sup>87</sup> *E.g.*, Ex. 4, AMZN Phono IV 00003062 [REDACTED]; Ex. 9, AMZN Phono IV 00002484 [REDACTED]

Ex. 23, AMZN Phono IV 00007346 [REDACTED]

Ex. 24, AMZN Phono IV 00004918 [REDACTED]

<sup>88</sup> Ex. 320, [REDACTED]

<sup>89</sup> Written Statement of David Kokakis, Dkt. No. 16-CRB-0003-PR (2018-2022) (*Phonorecords III*) (Oct. 28, 2016) ¶ 80.

<sup>90</sup> Ex. 345, [REDACTED]

[REDACTED]

[REDACTED]

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>91</sup> *Id.* at 1 [REDACTED]

<sup>92</sup> *Id.*

<sup>93</sup> Ex. 321, [REDACTED]

<sup>94</sup> Ex. 345, [REDACTED]

[REDACTED]; *see* Ex. 337, [REDACTED] Ex. 321,  
[REDACTED]

D. [REDACTED]

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>95</sup> Ex. 346, [REDACTED]

*id.* at 1

<sup>96</sup> See Duffett-Smith WDT ¶¶ 204-209.

<sup>97</sup> Ex. 347, [REDACTED]

<sup>98</sup> *Id.*

[REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>99</sup> Ex. 322, [REDACTED]

<sup>100</sup> Ex. 348, [REDACTED]

[REDACTED]

<sup>101</sup> Ex. 322, [REDACTED]

[REDACTED] *see id.* [REDACTED]

<sup>102</sup> Ex. 349, [REDACTED]

[REDACTED]

<sup>103</sup> *Id.*



37. [REDACTED]

38. [REDACTED]

---

<sup>104</sup> *Id.*; see also Ex. 348, [REDACTED]

<sup>105</sup> Ex. 349, [REDACTED]

<sup>106</sup> Ex. 319, [REDACTED]

<sup>107</sup> *Id.* at 2.

<sup>108</sup> Duffett-Smith WDT ¶¶ 91-92 & Ex. 23, AMZN\_Phono IV\_00007346 [REDACTED]

<sup>109</sup> Ex. 23, AMZN\_Phono IV\_00007346 [REDACTED]

<sup>110</sup> *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>111</sup> Duffett-Smith WDT ¶¶ 91-92.

<sup>112</sup> See Ex. 321, [REDACTED]; Ex. 322, [REDACTED]; Ex. 319, [REDACTED]

Before the  
**UNITED STATES COPYRIGHT ROYALTY BOARD**  
 Washington, D.C.

**In the Matter of:**

**DETERMINATION OF RATES  
 AND TERMS FOR MAKING AND  
 DISTRIBUTING PHONORECORDS  
 (Phonorecords IV)**

**Docket No. 21-CRB-0001-PR  
 (2023-2027)**

**DECLARATION OF JAMES DUFFETT-SMITH**

I, James Duffett-Smith, declare under penalty of perjury that the statements contained in my Supplemental Written Direct Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief.



Dated: May 4, 2022

James Duffett-Smith

Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.

In the Matter of:

**DETERMINATION OF RATES  
AND TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(*Phonorecords IV*)**

**Docket No. 21-CRB-0001-PR  
(2023-2027)**

**INDEX OF AMAZON.COM SERVICES LLC'S EXHIBITS  
TO THE SUPPLEMENTAL WRITTEN DIRECT TESTIMONY OF JAMES DUFFETT-SMITH**

Exhibit No.	Sponsoring Witness	Description	Restricted/ Public
Amazon Ex. 319	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 320	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 321	James Duffett-Smith	[REDACTED]	RESTRICTED

<b>Exhibit No.</b>	<b>Sponsoring Witness</b>	<b>Description</b>	<b>Restricted/ Public</b>
Amazon Ex. 322	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 323	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 324	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 324.1	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 325	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 326	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 327	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 328	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 329	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 330	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 331	James Duffett-Smith	[REDACTED]	RESTRICTED

<b>Exhibit No.</b>	<b>Sponsoring Witness</b>	<b>Description</b>	<b>Restricted/ Public</b>
Amazon Ex. 332	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 333	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 334	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 335	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 336	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 337	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 338	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 339	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 340	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 341	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 342	James Duffett-Smith	[REDACTED]	RESTRICTED

<b>Exhibit No.</b>	<b>Sponsoring Witness</b>	<b>Description</b>	<b>Restricted/ Public</b>
Amazon Ex. 342.1	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 342.2	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 343	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 344	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 345	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 346	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 347	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 348	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 349	James Duffett-Smith	[REDACTED]	RESTRICTED
Amazon Ex. 349.1	James Duffett-Smith	[REDACTED]	RESTRICTED

# Exhibits 319-349

*Restricted – Subject to Protective Order in  
Docket No. 21-CRB-0001-PR (2023-2027)  
(Phonorecords IV)*

## Omitted from Public Version



# Proof of Delivery

I hereby certify that on Thursday, May 05, 2022, I provided a true and correct copy of the Amazon's Motion to Strike, Or in the Alternative to Submit Supplemental Testimony, with Exhibits (PUBLIC) to the following:

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at  
joe.wetzel@lw.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at  
senglund@jenner.com

Google LLC, represented by Gary R Greenstein, served via E-Service at  
ggreenstein@wsgr.com

Copyright Owners, represented by Benjamin K Semel, served via E-Service at  
Bsemel@pryorcashman.com

Apple Inc., represented by Mary C Mazzello, served via E-Service at  
mary.mazzello@kirkland.com

Powell, David, represented by David Powell, served via E-Service at  
davidpowell008@yahoo.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at  
benjamin.marks@weil.com

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at  
senglund@jenner.com

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at  
senglund@jenner.com

Johnson, George, represented by George D Johnson, served via E-Service at  
george@georgejohnson.com

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at [susan.chertkof@riaa.com](mailto:susan.chertkof@riaa.com)

Signed: /s/ Joshua D Branson